

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MELVIN O. WRIGHT,
Plaintiff,

-v.-

9:04-CV-0308
(NAM)(GJD)

NYS DOCS, In Respondent Superior; COMMISSIONER GOORD;
A. DIRE, Corrections Officer, Cossackie Correctional Facility;
M. DERMUTT, Corrections Officer, Cossackie Correctional Facility;
M. KASUNIC, Corrections Officer, Cossackie Correctional Facility,

Defendants.

APPEARANCES:

OF COUNSEL:

MELVIN O. WRIGHT
Plaintiff, *pro se*
82-A-6311

HON. ELIOT SPITZER
Office of the Attorney General
State of New York
Department of Law
The Capitol
Albany, New York 12224

CHARLES J. QUACKENBUSH, ESQ.

GUSTAVE J. DIBIANCO, U.S. MAGISTRATE

ORDER

By Order filed on March 22, 2006 ("March Order"), Chief Judge Mordue granted defendants' motion for summary judgment and dismissed the complaint of plaintiff Melvin Wright ("plaintiff") in its entirety. Dkt. No. 31. Plaintiff has appealed from the March Order to the Second Circuit Court of Appeals. Dkt. No. 34. Presently before the Court is plaintiff's request to proceed *in forma pauperis* during the appeal of his case. Dkt. No. 35.

The procedure for a leave to proceed on appeal *in forma pauperis* from the District

Court to the Court of Appeals is governed by Rule 24 of the Federal Rules of Appellate Procedure. Rule 24(a)(3) states in relevant part that:

A party who was permitted to proceed in forma pauperis in the district-court action, ... may proceed on appeal in forma pauperis without further authorization, unless:

- (A) the district court--before or after the notice of appeal is filed--certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or
- (B) a statute provides otherwise.

Because this Court previously granted plaintiff's *in forma pauperis* application (see Dkt. No. 4), and has not revoked same, plaintiff may proceed on appeal *in forma pauperis* without further authorization from this Court. Accordingly, plaintiff's application (Dkt. No. 35) is denied as moot.¹

WHEREFORE, it is hereby

ORDERED, that plaintiff's request to proceed with the appeal of this matter *in forma pauperis* (Dkt. No. 35) is denied as moot, and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties.

Dated: April 12, 2006



Hon. Gustave J. DiBianco
U.S. Magistrate Judge

¹ Neither this ruling nor the prior granting of plaintiff's application to proceed *in forma pauperis* in any way prevents the Second Circuit from collecting the fees due it in light of the Prison Litigation Reform Act.